In the High Court of Punjab & Haryana at Chandigarh.

Civil Revision No.3064 of 2006.

Date of decision:24.4.2007.

M/s. Belliss India Limited.

...Petitioner.

Versus

Ram Chand Gupta and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.J.K.Sibal, Senior Advocate with Mr.Sapan Dhir, Advocate for the petitioner.

Mr.Sunil Chadha Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

This order shall dispose of Civil Revision No.3064 of 2006 and Civil Revision No.3065 of 2006 as the parties in both the petitions are the same and the questions of law and fact involved in these petitions are also the same. The facts are taken from Civil Revision No.3064 of 2006.

The respondents filed ejectment petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act,1973 (in short Rent Act) on the ground of non payment of arrears of rent. The petitioner filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (in short Act of 1996) in which it was alleged that there were agreements

between the parties executed on 16.12.1969 and 1.6.1983. There was an arbitration clause for referring the dispute between the parties to an Arbitrator. There was a dispute between the parties regarding the amounts spent by the petitioners towards white washing and other repairs and that the respondents had failed to install the Rain Harvesting System and, therefore, the matter was referable to the Arbitrator.

This application was contested by the respondents.

The learned trial Court vide order dated 6.5.2006 dismissed the application filed by the petitioner under Section 8 of the Act of 1996.

Hence, the present petition.

The submission of learned counsel for the petitioner was that the petitioner had served legal notice dated 21.4.2003 on the respondents informing them that the petitioner had incurred an amount of 1,06,719/11P upto February, 2003 towards the maintaining and repairing of three sheds in their possession. It was also pointed out that the petitioner had requested the respondents to install Rain Harvesting System which was mandatory under law. It was also of the cost of Rs.1.5 lacs. Hence, a request was made by the petitioner to the respondents for referring the matter to the Arbitrator.

Submits that a case for making reference to the Arbitrator was made out and the learned trial Court has gone wrong in dismissing the application. Reliance was placed on the judgment of this Court reported as **Union of India Versus Smt. Lajwant Kaur,** 2003(2) P.L.R. 324, judgments of the Hon'ble Supreme Court reported as **P. Anand Gajapathi Raju and others Versus P.V.G.Raju (dead) and others,** (2000) 4 Supreme Court Cases 539 and **Hindustan Petroleum Corpn. Ltd. Versus**

Pinkcity Midway Petroleums (2003) 6 Supreme Court Cases 503**.** It was submitted that the petition be accepted.

On the other hand, the submission of learned counsel for the petitioner was that no such dispute arises between the parties from the agreements which were executed between the parties.

Considered.

Agreement dated 16.12.1969 (Annexure P-1) has arbitration clause. Similarly, clause 9 in the agreement dated 1.6.1983 (Annexure P-2) has also arbitration clause which reads as under;-

> "If any doubt, dispute or difficulty arises between the parties hereto regarding interpretation of any of the provisions herein and/or rights or liabilities of the parties hereto whether during the continuance of this agreement or otherwise then the same shall be referred to arbitration of a single arbitrator to be appointed in writing by the President for the time being of Institution of Engineers (India). The arbitration shall be held at New Delhi and any award made shall be final and binding on the parties hereto and such arbitration shall be conducted in accordance with the Indian Arbitration Act,1949, or any statutory re-enactment or modification thereof."

It is obvious that the dispute between the parties must arise out of the agreement between the parties. It should not be hypothetical demand made by the landlord or hypothetical demand made by the tenant-petitioner and then a dispute is created for which arbitration clause is invoked. It was admitted by the learned counsel for the tenant-petitioner that there was no

clause in the agreement dated 1.6.1983 if the petitioner had the right to get the building repaired or white washed, then he can lodge a claim with the landlord. Similarly, there was no clause in the agreement dated 1.6.1983 if the landlords were to get installed Rain Harvesting System. Both these demands have been made by the petitioner in the legal notice. If such disputes are considered to be disputes referable to the Arbitrator by invoking the arbitration clause of the agreement dated 1.6.1983,then there would be no end to the disputes between the parties. The tenant would on the facts create demands from the landlord and on the refusal of the landlord would revoke the arbitration clause for referring the dispute to the Arbitrator. Such construction of arbitration clause is neither permissible nor warranted by law. The dispute between the parties must arise out of the terms and conditions of the agreements itself which contain the arbitration clause. Since admittedly no such dispute arises between the parties,therefore, the arbitration clause cannot be invoked.

Moreover, in the present case, the respondent-landlords have filed only ejectment petition on the ground of non payment of arrears of rent. The petitioner may tender the arrears of rent or may resist it in accordance with law. So far as the expenditure incurred by them on minor repairs or white washing of the building, they can recover the same by filing civil suit for recovery or by adopting any other legal course. Similarly, they can force the respondents to install Rain Harvesting System or to claim its expenditure by getting it installed of their own but all these demands cannot be termed to be disputes between the parties within the scope of agreement when these demands are not made out from the terms or conditions of the

agreement dated 1.6.1983.

The judgments relied upon the learned counsel for the petitioner do not apply to the facts of the present case and, therefore, do not tilt the case in their favour.

In view of the discussion held above, there is no merit in this revision petition and the same is dismissed.

April 24,2007. (S. N. Aggarwal)
Jaggi Judge